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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/554,980 07/17/00 KOLESNICK

R D6049

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HM22/1106

EXAMINER

HAMUD, F

ART UNIT

PAPER NUMBER

1647

DATE MAILED:

11/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

file copy

**Office Action Summary**Application No.  
**09/554,980**

Applicant(s)

**FUKS et al.**

Examiner

**Fozia Hamud**

Art Unit

**1647**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Aug 23, 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 10 is/are allowed.
- 6) ☒ Claim(s) 4-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)                      18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_                      20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Applicant's election with traverse of Group I (claims 1-3) in Paper No.6, filed on August 23 2001 is acknowledged. Applicants' traversal that inventions II and III are specific embodiments of the method of invention I is persuasive, therefore, inventions of Groups I-III will be examined together.

Claims 8 and 9 have been canceled. Thus claims 1-7 and 10 are pending and under consideration.

2. Drawings have been approved by the draftsman.

#### ***Specification***

2a. It is noted that this application appears to claim subject matter disclosed in prior PCT Application No. PCT/US98/24806 filed on 20 November 1998, now WO 99/26648 issued on 3 June 1999. A reference to the prior application must be inserted as the first sentence of the specification of this application if Applicant intends to rely on the filing date of the prior application under 35 U.S.C. 120. See 37 CFR 1.78(a).

It is suggested that below the title of the invention be inserted:

Cross Reference to Related Applications

"This Application is a 371 of "WO 99/26648".

Appropriate correction is required.

2b. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b).

An abstract on a separate sheet is required.

***Claim Rejections - 35 U.S.C. § 112***

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3a. Regarding claim 4, the phrase "characterized" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 5-7 are vague and indefinite so long as they depend on claim 4 for the limitation set forth directly above.

### ***Conclusion***

claims 1-3 and 10 are allowable.

Claims 4-7 would be allowable if they are amended to overcome the rejection under 35 U.S.C. 112, second paragraph.

### ***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Haimovitz-Friedman et al. Protein Kinase C mediates basic fibroblast growth factor protection of endothelial cells against radiation induced apoptosis, cancer Research. Vol.54, pages 2591-2597, 15 May 1994.

Fuks et al. Basic Fibroblast Growth Factor protects endothelial cells against radiation induced programmed cell death in vitro and in vivo. Cancer Research, Vol.54, pages 2582-2590, 15 May 1994.

Rice et al. Protection from endotoxic shock in mice by pharmacologic inhibition of phosphatidic acid, Proceedings of National Academy of Science, USA. Vol.91, pages 3857-3861. April 1994.

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia Hamud whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday, Wednesday-Thursday from 6:30AM to 4:00PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Fozia Hamud  
Patent Examiner  
Art Unit 1647  
29 October 2001

**CHRISTINE J. SAOUD  
PRIMARY EXAMINER**

*Christine J. Saoud*